

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ELECTRONICALLY FILED Jun 13 2018 U.S. DISTRICT COURT Northern District of WV
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**WESTFIELD INSURANCE COMPANY,**

**Plaintiff,**

**v.**

**Civil Action No. 5:18-CV-100 (Bailey)**

**SISTERSVILLE TANK WORKS, INC.,  
ROBERT N. EDWARDS, DEBORAH S.  
EDWARDS, E. JANE PRICE, Individually  
and as Executrix of the Estate of Robert  
G. Price, deceased, GARY THOMAS SANDY,  
PEGGY P. SANDY, DOUGLAS L. STEELE, and  
CAROL STEELE,**

**Defendants.**

**WESTFIELD INSURANCE COMPANY'S  
COMPLAINT FOR DECLARATORY RELIEF**

Comes now Westfield Insurance Company ("Westfield"), pursuant to Rule 57 of the *Federal Rules of Civil Procedure*, 28 U.S.C. § 2201, and *W.Va. Code §55-13-1 et seq.*, which for its Complaint for Declaratory Relief states as follows:

**Jurisdiction**

1. Westfield Insurance Company is an Ohio corporation, with its principal place of business in Westfield Center, Ohio.
2. Sistersville Tank Works, Inc. ("STW") is a West Virginia corporation, with its principal place of business located in Sistersville, Tyler County, West Virginia.
3. Robert N. Edwards and Deborah S. Edwards are, on information and belief, citizens and residents of Proctor, Wetzel County, West Virginia.
4. E. Jane Price is, upon information and belief, a citizen and resident of Paden City,

Wetzel County, West Virginia, and is the personal representative of the Estate of Robert G. Price, who was also a resident of West Virginia at the time of his death.

5. Gary Thomas Sandy and Peggy P. Sandy are, on information and belief, citizens and residents of Stoneville, North Carolina.

6. Douglas Steele and Carol Steele are, on information and belief, citizens and residents of Proctor, Wetzel County, West Virginia.

7. Robert N. Edwards, Deborah S. Edwards, E. Jane Price, Gary Thomas Sandy, Peggy P. Sandy, Douglas Steele and Carol Steele (hereinafter collectively referred to as “ the Claimants”) have filed various lawsuits in the Circuit Courts of West Virginia seeking damages against STW.

8. The transactions giving rise to this Complaint for Declaratory Relief occurred in the Northern District of West Virginia.

9. This Court has venue and jurisdiction over this matter pursuant to 28 U.S.C. § 2201, based upon complete diversity of citizenship between the parties and an amount in controversy in excess of \$75,000.

### **The Edwards Claim**

10. On or about February 22, 2016, Robert N. Edwards and Deborah S. Edwards sued STW in the Circuit Court of Marshall County, alleging that STW negligently manufactured and maintained storage tanks for one of its customers, Covestro, LLC (“Covestro”), which resulted in employees of Covestro, including Robert N. Edwards, being exposed to various dangerous chemicals. The action is identified as Civil Action No. 16-C-32.

11. The Edwards Complaint alleges that Robert N. Edwards was diagnosed with renal cell carcinoma on or about April 22, 2014, as a direct and proximate result of his exposure to

nephrotoxic chemicals and solvents during his work at Covestro and its predecessor, which employed Mr. Edwards from 1962-2001.

12. Count I of the Edwards' First Amended Complaint is against Covestro, an alleged customer of STW, and asserts a claim under *W.Va. Code §23-4-2(d)(ii)*, the deliberate intent exception to workers compensation employer's immunity.

13. Count II of the Edwards' First Amended Complaint relates to STW, and asserts that STW manufactured, installed, inspected, repaired and/or performed maintenance on chemical tanks and vessels at the Covestro facility, when it knew or should have known permitted chemical liquids, vapors, and/or fumes to escape the confinement of the tanks and vessels if the tanks were not properly manufactured, installed, and inspected in an adequate and workmanlike manner.

14. The Edwards' First Amended Complaint also asserts that STW negligently, carelessly, recklessly and willfully breached its duties of care by failing to properly manufacture, in an adequate and workmanlike manner, the chemical tanks; failed to properly install, in an adequate and workmanlike manner, the chemical tanks, by failing to thoroughly inspect the facility chemical tanks for leaks, faults, flaws and imperfections; failed to recognize actual leaks, faults, flaws, and imperfections to the integrity of the facility chemical tanks; failed to properly repair and/or maintain the chemical tanks; failed to create a safety plan for chemical tank use and maintenance; and failed to follow-up with Covestro's predecessors' in interest to ensure that the safety plan instructions were being followed, thereby resulting in nephrotoxic chemical liquids, vapors, fumes and gases escaping into the general population.

15. The Edwards' First Amended Complaint seeks recovery for Mrs. Edwards' loss of her husband's consortium.

16. A request for punitive damages is set forth in the Edwards' First Amended Complaint, based on the alleged willful, wanton, malicious, reckless, extremely negligent, grossly negligent indifference to the civil rights of others and/or done with a conscious, reckless and outrageous indifference to the health and safety of others, and specifically Robert N. Edwards.

### **The Price Claim**

17. E. Jane Price sued STW and other Defendants which she has identified as "Benzene Supplier Defendants" and/or the "Formaldehyde Supplier Defendants," including Shell Chemical LP, Tauber Oil Company, Valero Refining-Texas, LP, BP Amoco Chemical Company, Sunoco, Inc., Ashland, LLC, Axiall Corporation, Hexion Inc., and Celanese Corporation, in the Circuit Court of Marshall County, West Virginia, on April 24, 2017. Said action is identified as Civil Action No. 17-C-62H.

18. In her Complaint, Price alleges that her husband, Robert G. Price, was employed by Bayer Corporation and/or its predecessors in interest, Miles, Inc. and Mobay Corporation, at its Marshall County, West Virginia facility, between 1960 and 1995.

19. Price alleges that, on or about April 28, 2015, her husband was diagnosed with acute myleoid leukemia ("AML").

20. Price alleges that her husband died on June 6, 2015.

21. Price asserts claims for wrongful death and bodily injury leading up to her husband's death.

22. Price's Complaint alleges that STW owned and operated a chemical tank manufacturing, installation, maintenance and repair facility in Tyler County, West Virginia, and did business at the Marshall County facility where her husband was employed.

23. Price failed to allege any specific dates for any particular work area identified.

24. During Price decedent's employment with Bayer and its predecessors in interest, Price's decedent allegedly worked "with, near, around and was exposed to" toxic chemicals and solvents including, but not limited to, benzene, benzene derivatives, and/or benzene-containing products, as well as Formaldehyde, which were manufactured, processed, supplied and/or sold by the Benzene Supplier Defendants and/or the "Formaldehyde Supplier Defendants."

25. Price's decedent was allegedly exposed to the toxic chemicals and solvents by means of inhalation and/or dermal absorption.

26. Some of the chemicals allegedly resulting in exposure to Price's decedent were stored in vessels manufactured, installed, maintained and/or repaired by STW "around which or near" where Mr. Price worked.

27. Price's decedent's exposure to the toxic chemicals and solvents is alleged to have been the direct and proximate cause of his development of Acute Myeloid Leukemia ("AML").

28. Price alleges that STW, acting by and through its servants and agents, manufactured, installed, inspected, repaired and/or performed maintenance on chemical tanks and vessels at the Marshall County facility. No specific dates are identified and there is no indication as to what the "maintenance" consisted.

29. Price claims that STW knew, or should have known, that the chemical liquids, vapors, and/or fumes would escape the confinement of its tanks and vessels if the same were not properly manufactured, installed, thoroughly inspected, or if imperfections in the tank integrity were not identified and/or repairs/maintenance were not done in an adequate and workmanlike manner.

30. Price asserts that STW negligently, carelessly, recklessly and wilfully breached its

duties of care by failing to properly manufacture, in an adequate and workmanlike manner, the chemical tanks; by failing to properly install, in an adequate and workmanlike manner the chemical tanks; by failing to thoroughly inspect the facility chemical tanks for leaks faults, flaws, and/or imperfections; by failing to recognize the actual leaks, flaws, faults and imperfections to the integrity of the vessels at the facility; and by failing to properly repair and/or maintain the chemical tanks and failed to create a safety plan for chemical tank use and maintenance.

31. Price's decedent allegedly developed AML, which resulted in his wrongful death.

32. Price also alleges loss of the general services, companionship, and society of her husband, and for having to render services to her husband which she would otherwise not have had to render, but for his development of AML.

33. Price alleges entitlement to punitive damages from STW, based on the allegation that STW's conduct was wilful, wanton, malicious, reckless, extremely negligent, done with criminal indifference to the civil rights of others, and/or done with a conscious, reckless and outrageous indifference to the health and safety of others.

### **The Sandy Claim**

34. Gary Sandy and his wife Peggy Sandy sued STW and numerous other defendants in the Circuit Court of Kanawha County of West Virginia on July 5, 2017. The action was identified as Civil Action No. 17-C-965.

35. The Sandys filed a Short Form Complaint which alleges that Gary Sandy was born September 18, 1945, and has asbestosis which was diagnosed on April 13, 2017.

36. The Sandy Complaint alleges that STW and the other defendants being sued as Asbestos Defendant Product Manufacturers/Suppliers/Installers/Distributors upon the theories of

negligence, contaminated buildings, breach of expressed/implied warranty, strict liability, intentional tort, conspiracy, misrepresentations by specific defendants, wrongful death and post sale duty to warn. Certain defendants are also being sued as premises owners and as plaintiff's employers for deliberate intent/intentional tort.

37. The Sandy Complaint contains a listing of Gary Sandy's occupational and exposure history, which identifies employment and/or exposure at the STW facility in Sistersville, West Virginia, where Gary Sandy was allegedly employed as a maintenance helper from 1965 to 1967. The Sandy Complaint also identifies employment and/or exposure at Quaker State Refinery in St. Mary's, West Virginia, from 1967 through 1988, and that Gary Sandy's father worked at the Quaker State Refinery in St. Mary's, West Virginia from 1945 through 1965. No specific allegations are made concerning any work performed by STW or products sold by STW at the Quaker State Refinery.

38. The Sandy Complaint also makes reference to a "Master Complaint" filed by Gary Sandy's counsel in the Circuit Court of Kanawha County, West Virginia. The "Master Complaint" includes no direct allegations against STW and makes no specific reference to the factual or legal basis of any claim being asserted by Mr. Sandy.

#### **The Steele Claim**

39. Douglas Steele and his wife Carol Steele sued STW and numerous other defendants in the Circuit Court of Marshall County of West Virginia on November 15, 2017. Said action was identified as Civil Action No. 17-C-231-H.

40. The Steele Complaint alleges that STW negligently manufactured, installed, inspected and/or maintained storage tanks for Axiall, LLC, a successor in interest to PPG Industries, Inc.

(“PPG”), which resulted in Douglas Steele, a former employee of PPG, being exposed to various dangerous chemicals.

41. The Steele Complaint further alleges that Douglas Steele was diagnosed with chronic lymphocytic leukemia (“CLL”) in January of 2016, as a direct and proximate result of his exposure to Benzene products during his work at PPG, which employed Mr. Steele from 1968 to 2006.

42. Count I of the Steele Complaint is against Axiall, the successor in interest to PPG, and alleges a claim under *W.Va. Code §23-4-2(d)(ii)*, the deliberate intent exception to workers compensation employer’s immunity.

43. Counts II and III of the Steele Complaint allege negligence against the Benzene suppliers and chemical suppliers; Counts IV and V are for breach of warranty against the Benzene suppliers and chemical suppliers; and Counts VI and VII are for strict liability against the Benzene suppliers and chemical suppliers.

44. Count VIII of the Steele Complaint relates to STW only, and alleges that STW manufactured, installed, inspected, repaired and/or performed maintenance on chemical tanks and vessels at the Axiall facility, and that it knew or should have known that chemical liquids, vapors, and/or fumes would escape the confinement of the tanks and vessels if the tanks were not properly manufactured, installed, and inspected in an adequate and workmanlike manner.

45. The Steele Complaint goes on to on to allege that STW negligently, carelessly, recklessly and willfully breached its duties of care by failing to properly manufacture, in an adequate and workmanlike manner, the chemical tanks; by failing to properly install, in an adequate and workmanlike manner, the chemical tanks, by failing to thoroughly inspect the facility chemical tanks for leaks, faults, flaws and imperfections; by failing to recognize actual leaks, faults, flaws, and



imperfections to the integrity of the facility chemical tanks; by failing to properly repair and/or maintain the chemical tanks; and by failing to create a safety plan for chemical tank use and maintenance and failing to follow-up with Axiall's predecessors' in interest to ensure that the safety plan instructions were being followed, thereby resulting in Benzene liquids, vapors, fumes and gases escaping into the general population of workers at the facility and, in particular, into Steele's work areas. No specific dates are identified for any of these allegations.

46. Count IX of the Steele Complaint seeks recovery for Carol Steele's loss of her husband's consortium.

47. A request for punitive damages is set forth in the Steele Complaint, based on the Defendants' alleged willful, wanton, malicious, reckless, extremely negligent, grossly negligent indifference to the civil rights of others and/or done with a conscious, reckless and outrageous indifference to the health and safety of others, and specifically Douglas Steele.

#### **The Westfield Insurance Policies**

48. STW was insured by Plaintiff Westfield Insurance Company over a 22-year period, from 1989 to 2010, under policies identified as Policy Nos. 3471223 and 3471224.

49. Westfield Policy No. 3471223 was a Commercial General Liability Policy while Westfield Policy No. 3471224 was a Claims Made policy which provided coverage for liability arising out of products completed operations.

50. Because the Edwards, Price, Sandy and Steele claims were made in 2016 and 2017, after Westfield Policy No. 3471224 (the "Claims Made" Policy) was no longer in effect, it is inapplicable to the claims because the coverage it provided only applied to claims made during an applicable policy period.

51. The version of Westfield Policy No. 3471223 applicable from April 15, 2009 to April 15, 2010 provided, in relevant part, as follows:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

### **SECTION I - COVERAGES**

#### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

##### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.

\* \* \*

- b.** This insurance applies to “bodily injury” and “property damage” only if:

- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;”

- (2) The “bodily injury” or “property damage” occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew prior to the policy period, that the “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.
- c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.
- d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:
  - (1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or
  - (3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.
- e. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury.”

## **2. Exclusions**

This insurance does not apply to:

\* \* \*

**f. Pollution**

- (1)** “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”:
  - (a)** At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i)** “Bodily injury” if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building’s occupants or their guests;
    - (ii)** “Bodily injury” or “property damage” for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii)** “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”;
  - (b)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c)** Which are or were at any time transported, handled,

stored, treated, disposed of, or processed as waste by or for:

- (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or

subcontractor; or

(iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”.

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of “pollutants”.

However, this paragraph does not apply to liability for damages because of “property damage” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or “suit” by or on behalf of a governmental authority.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:

\* \* \*

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and

directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

15. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. “Products-completed operations hazard”:

- a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been

put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b.** Does not include “bodily injury” or “property damage” arising out of:
- (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
  - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3)** Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject o the General Aggregate Limit.

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION - PRODUCTS-COMPLETED OPERATIONS HAZARD**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

This insurance does not apply to “bodily injury” or “property damage” included within the “products-completed operations hazard.”

\* \* \*

52. The language of Westfield Policy No. 3471223 was identical for the 2008-2009



Policy period.

53. During the 2007-2008 Policy period, there was a new Commercial General Liability Form for Westfield Policy No. 3471223, which was also used for policy periods 2006-2007 and 2005-2006. Said Policy Form provided as follows:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured as shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section **II** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** - Definitions.

### **SECTION I - COVERAGES**

#### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

##### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in Section **III** - Limits of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b. This insurance applies to “bodily injury” and “property damage” only if:
  - (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;”
  - (2) The “bodily injury” or “property damage” occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** - Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.
- c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.
- d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

- (1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or
  - (3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.
- e. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

## **2. Exclusions**

This insurance does not apply to:

\* \* \*

### **f. Pollution**

- (1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”;
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) “Bodily injury” if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building’s occupants or their guests;
    - (ii) “Bodily injury” or “property damage” for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed

for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the “pollutants” are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) “Bodily injury” or “property damage” arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of “mobile equipment” or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the “bodily injury” or “property damage” arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants, or other operating fluids are brought on or to the premises, site or location with the intent that they be

discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) “Bodily injury” or “property damage” sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”.

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”.

(2) Any loss, cost or expenses arising out of:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to. Or assess the effects of “pollutants”; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of “pollutants”.

However, this paragraph does not apply to liability for damages because of “property damage” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or “suit” by or on behalf of a governmental authority.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

\* \* \*

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

15. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### **EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This insurance does not apply to “bodily injury” or “property damage” included within the “products-completed operations hazard.”

\* \* \*

54. For the 2004-2005 Policy period, Westfield Policy No. 3471223 provided as follows:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section **II** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** - Definitions.

### **SECTION I - COVERAGES**

#### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

##### **1. Insuring Agreement**

**a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and
- (2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
  - (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;”
  - (2)** The “bodily injury” or “property damage” occurs during the policy period; and
  - (3)** Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** - Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew prior to the policy period, that the “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.
- c.** “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.
- d.** “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:
  - (1)** Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
  - (2)** Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or



(3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

e. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury.”

## 2. Exclusions

This insurance does not apply to:

\* \* \*

### f. Pollution

(1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”:

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) “Bodily injury” if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;

(ii) “Bodily injury” or “property damage” for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”;

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

- (ii) “Bodily injury” or “property damage” sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”.
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of “pollutants”.

However, this paragraph does not apply to liability for damages because of “property damage” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or “suit” by or on behalf of a governmental authority.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

\* \* \*

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

- 3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

- 13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

- 15. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- 16. “Products-completed operations hazard”:

- a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has

been completed.

- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete will be treated as completed.

- b. Does not include “bodily injury” or “property damage” arising out of:
  - (1) The transportation of property, unless the injury or damages arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that product-completed operations are subject to the General Aggregate Limit.

\* \* \*

55. For the 2003-2004 Policy period, the Commercial General Liability Form for Westfield Policy No. 3471223 was the same as 2004-2005. For the 2002-2003 Policy period, however, there was a different Form, which provided, in relevant part, as follows:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully

to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section **II** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** - Definitions.

## **SECTION I - COVERAGES**

### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

#### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.

\* \* \*

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
  - (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;” and
  - (2)** The “bodily injury” or “property damage” occurs during the policy period.

- c. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

\* \* \*

## **2. Exclusions**

This insurance does not apply to:

\* \* \*

### **f. Pollution**

- (1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) “Bodily injury” if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;

- (ii) “Bodily injury” or “property damage” for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”;

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others

for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization from whom you may be legally responsible; or:
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or



subcontractor; or

(iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”.

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of “pollutants”.

However, this paragraph does not apply to liability for damages because of “property damage” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or “suit” by or on behalf of a governmental authority.

\* \* \*

## SECTION II - WHO IS AN INSURED

\* \* \*

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your

officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

16. “Products-completed operations hazard”:

- a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair,

or replacement, but which is otherwise complete will be treated as completed.

**b.** Does not include “bodily injury” or “property damage” arising out of:

- (1)** The transportation of property, unless the injury or damages arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
- (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3)** Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that product-completed operations are subject to the General Aggregate Limit.

\* \* \*

56. During the 2001-2002 and the 2000-2001 Policy periods, the language of Westfield Policy No. 3471223 was the same, except there was a different Total Pollution Exclusion, which provided, in relevant part, as follows:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion **f.** under paragraph **2.**, Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section **I** - coverages) is replaced by the following:

This insurance does not apply to:

**f. Pollution**

- (1)** “Bodily injury” or “property damage” which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2)** Any loss, cost or expense arising out of any:
  - (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of pollutants; or
  - (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

\* \* \*

57. For the Policy periods of 1999-2000, 1998-1999, and 1997-1998, Westfield Policy No. 3471223 provided, in relevant part, as follows:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

## **SECTION I - COVERAGES**

### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

#### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A and B.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;” and
  - (2)** The “bodily injury” or “property damage” occurs during the policy period.
- c.** Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

## 2. Exclusions

This insurance does not apply to:

\* \* \*

### f. Pollution

- (1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization from whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations
    - (i) If the “pollutants” are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) If the operations are to test for, monitor, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraph (d)(i) does not apply to “bodily injury” or “property damage” arising out of the escape of fuels, lubricants or other operating fluids which are needed to

perform the normal electrical, hydraulic or mechanical functions necessary for the operation of “mobile equipment” or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraphs **(a)** and **(d)(i)** do not apply to “bodily injury” or “property damage” arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

**(2)** Any loss, cost or expense arising out of any:

- (a)** Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”; or
- (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of “pollutants”.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditions or reclaimed.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

- 1.** If you are designated in the Declarations as:

\* \* \*

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION F - DEFINITIONS**

\* \* \*

- 12. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

- 14. “Products-completed operations hazard”:

- a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete will be treated as completed.



- b.** Does not include “bodily injury” or “property damage” arising out of:
- (1)** The transportation of property, unless the injury or damages arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
  - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3)** Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that product-completed operations are subject to the General Aggregate Limit.

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion **f.** under paragraph **2.**, Exclusions of **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section **I - Coverages**) is replaced by the following:

This insurance does not apply to:

- f.** Pollution
- (1)** “Bodily injury” or “property damage” which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
  - (2)** Any loss, cost or expense arising out of any:
    - (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or

neutralize, or in any way respond to, or assess the effects of pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**EXCLUSION - PRODUCTS-COMPLETED OPERATIONS HAZARD**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

This insurance does not apply to “bodily injury” or “property damage” included within the “products - completed operations hazard.”

\* \* \*

58. For 1996-1997, Westfield Policy No. 3471223 included a slightly different Commercial General Liability Form, which provided, in relevant part, as follows:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a

Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

## **SECTION I - COVERAGES**

### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

#### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A and B.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;” and
  - (2)** The “bodily injury” or “property damage” occurs during the

policy period.

- c. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

## 2. Exclusions

This insurance does not apply to:

\* \* \*

### f. Pollution

- (1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization from whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations
    - (i) If the “pollutants” are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) If the operations are to test for, monitor, contain, treat, detoxify or neutralize, or in any

way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to “bodily injury” or “property damage” arising out heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of “pollutants”.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditions or reclaimed.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

\* \* \*

- c. An organization other than a partnership or joint venture, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

12. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

14. a. “Products-completed operations hazard” includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

- b. “Your work” will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- c. This hazard does not include “bodily injury” or “property damage” arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the “loading or unloading” of it;

- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification in this Coverage Part in our manual of rules includes products or completed operations.

\* \* \*

59. In addition, a new endorsement for the total pollution exclusion was added to the 1996 to 1997 version of Westfield Policy No. 3471223, which provided as follows:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion **f.** under paragraph **2.**, Exclusions of **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section **I - Coverages**) is replaced by the following:

This insurance does not apply to:

- f.(1)** “Bodily injury” or “property damage” which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2)** Any loss, cost or expense arising out of any:
  - (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b)** Claim or “suit” by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way

responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

---

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

This insurance does not apply to “bodily injury” or “property damage” included within the “product - completed operations hazard.”

\* \* \*

60. During the 1995-1996 Policy period, Westfield Policy No. 3471223 had the same Commercial General Liability form, but a different Total Pollution Exclusion and Completed Operations Exclusion Endorsement, which provided, in relevant part, as follows:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion **f.** under paragraph **2.**, Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section **I** - Coverages) is replaced by the following:

This insurance does not apply to:



- f.(1)** “Bodily injury” or “property damage” which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2)** Any loss, cost or expense arising out of any:
- (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b)** Claim or “suit” by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminants including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

---

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

This insurance does not apply to “bodily injury” or “property damage” included within the “products - completed operations hazard.”

\* \* \*

61. For the 1994 to 1995 Policy period, the Commercial General Liability Form of Westfield Policy No. 3471223 remained the same, but the Total Pollution Exclusion was different, and provided as follows:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## **WEST VIRGINIA CHANGES**

This endorsement modifies insurance provided under the following:

### **EMPLOYERS LIABILITY INSURANCE**

Exclusion 5 is replaced by the following:

- 5.**     bodily injury intentionally caused or aggravated by you, or bodily injury resulting from an act which is determined to have been committed by you with the belief that an injury is substantially certain to occur;

This exclusion does not apply to bodily injury for which you are legally liable when claim or suit is brought under West Virginia Code Annot. Section 23-4-2.

\* \* \*

62.     During the 1993-1994 Policy period, Westfield Policy No. 3471223 had a different Commercial General Liability Form and Total Pollution Exclusion, which provided as follows:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

### **SECTION I - COVERAGES**

#### **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

## **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend any “suit” seeking those damages. We may at our discretion investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2)** Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;” and
  - (2)** The “bodily injury” or “property damage” occurs during the policy period.
- c.** Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury.”

## **2. Exclusions**

This insurance does not apply to:

\* \* \*

- f. (1)** “bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration,

release or escape of pollutants:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
  - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
  - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or

assess the effects of pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:

\* \* \*

- c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

- 3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

- 9. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

- 11.
  - a. “Products-completed operations hazard” includes all “bodily injury” and “property damage” occurring away from premises you own or

rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

b. “Your work” will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

c. This hazard does not include “bodily injury” or “property damage” arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the “loading or unloading” of it;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification in this Coverage Part in our manual of rules includes products or completed operations.

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### **TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion **f.** under COVERAGE A (Section I) is replaced by the following:

- f.(1)** “Bodily injury” or “property damage” which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2)** Any loss, cost or expense arising out of any:
  - (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

\* \* \*

63. For the Policy period of 1994-1995, the Commercial General Liability Form of Westfield Policy No. 3471223 remained the same, but the Total Pollution Exclusion was different, and provided as follows:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### **TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

## COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion **f.** under COVERAGE A (Section I) is replaced by the following:

- f.(1)** “Bodily injury” or “property damage” which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2)** Any loss, cost or expense arising out of any:
- (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

\* \* \*

64. For the Policy period of 1993 to 1994, there was a different Commercial General Liability Form for Westfield Policy No. 3471223, which provided as follows:

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).



Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

## **SECTION I - COVERAGES**

### **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

#### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend any “suit” seeking those damages. We may at our discretion investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
  - (2)** Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
  - (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;” and
  - (2)** The “bodily injury” or “property damage” occurs during the policy period.
- c.** Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury.”

#### **2. Exclusions**

This insurance does not apply to:

\* \* \*

- f. (1) “bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations:
    - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to “bodily injury” or “property damage” arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

\* \* \*

## **SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:

\* \* \*

- c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

9. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

- 11. a.** “Products-completed operations hazard” includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:
- (1)** Products that are still in your physical possession; or
  - (2)** Work that has not yet been completed or abandoned.
- b.** “Your work” will be deemed completed at the earliest of the following times:
- (1)** When all of the work called for in your contract has been completed.
  - (2)** When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
  - (3)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- c.** This hazard does not include “bodily injury” or “property damage” arising out of:
- (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the “loading or unloading” of it;
  - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3)** Products or operations for which the classification in this Coverage Part in our manual of rules includes products or completed operations.

\* \* \*

65. Westfield Policy No. 3471223 for the period of 1992-1993 was the same as for 1993-1994. However, for the 1991-1992 Policy period, the Commercial General Liability Form was generally the same as Policy period 1992-1993, but it did not contain a separate exclusionary endorsement for pollution. Instead, it included the identical Pollution Exclusion in the Commercial General Liability Form.

66. For the Policy period of 1990-1991, there was a different Commercial General Liability Form for Westfield Policy No. 3471223 which provided as follows:

\* \* \*

#### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

The word “insured” means any person organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

#### **SECTION I - COVERAGES**

##### **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

###### **1. Insuring Agreement.**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to

defend any “suit” seeking those damages. We may at our discretion investigate any “occurrence” and settle any claim or “suit” that may result.

\* \* \*

- b.** This insurance applies to “bodily injury” and “property damage” only if:
  - (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory;” and
  - (2)** The “bodily injury” or “property damage” occurs during the policy period.
- c.** Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury.”

## **2. Exclusions**

This insurance does not apply to:

\* \* \*

- f.(1)** “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
  - (a)** At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c)** Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly

or indirectly on any insured's behalf are performing operations:

- (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
- (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

\* \* \*

## SECTION II - WHO IS AN INSURED

\* \* \*

c. An organization other than a partnership or joint venture, you are an

insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

\* \* \*

## **SECTION V - DEFINITIONS**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

9. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

11. a. “Products-completed operations hazard” includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

- b. “Your work” will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.



Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- c. This hazard does not include “bodily injury” or “property damage” arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the “loading” or “unloading” of it;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
  - (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD**

This endorsement modifies the insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This insurance does not apply to “bodily injury” or “property damage” included within the “product - completed operations hazard.”

\* \* \*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion f. under COVERAGE A (Section I) is replaced by the following:

- f. (1) “Bodily injury” or “property damage” which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This insurance does not apply to “bodily injury” or “property damage” included within the “products - completed operations hazard.”

\* \* \*

67. Westfield was not STW’s insurer at the time any of the Claimants were diagnosed with the diseases and/or medical conditions complained of in their respective Complaints against

STW.

68. None of the Claimants have alleged that they suffered harm as a result of STW's work on any specific tank on any specific date or that they suffered harm as a result of any specific maintenance work that was completed by STW on any specific date.

69. All of the Claimants appear to allege that their exposure to harmful substances took place over a long period of time, including periods of time when Westfield did not insure STW.

70. None of the Claimants have made any specific allegations including when or how any specific leak of harmful substances occurred or how STW was liable or responsible for such a leak.

71. Each of the Westfield Policies at issue included a definition for "occurrence," which defined the term to mean "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

72. Each of the Westfield Policies provided that the liability coverage only applied to claims for "bodily injury" or "property damage" that occurred during the policy period.

73. Because all of the Claimants alleged injuries manifested after Westfield ceased to insure STW, no "occurrence" took place during any applicable policy period to trigger coverage under any of the Westfield Policies.

74. To the extent any of the Claimants allege injury from exposure to harmful substances which occurred while working with those harmful substances in the course of their employment, such injuries do not trigger coverage under any of the Westfield Policies because such work by a Claimant (or Claimant's decedent or spouse) would not constitute an "occurrence" or accident.

75. To the extent any of the Claimants allege injury from exposure to harmful substances which resulted from a leak in a previously installed tank which had been put to its intended use by

STW's customer and upon which STW was no longer working, coverage for such injury is expressly excluded under the subject Westfield Policies as "bodily injury" "included within the 'products completed operations hazard.'"

76. To the extent any of the Claimants allege injury from the discharge, dispersal, seepage, migration, release or escape of harmful substances from any tank built, installed or maintained by STW, coverage for such injuries is expressly excluded under the subject Westfield Policies as "bodily injury" arising from the discharge, dispersal, seepage, migration, release or escape of "pollutants."

77. To the extent any of the Claimants allege injury from exposure to asbestos, the Westfield Policies expressly exclude coverage for any claim for "bodily injury" arising out of the inhalation, ingestion, or physical exposure to asbestos or goods or products containing asbestos; or the removal, repair, encapsulation, enclosure, abatement, or maintenance of asbestos in or from any goods, product or structure; or from the disposal of asbestos or goods or products containing asbestos.

78. To the extent any of the Claimants allege injury from exposure to asbestos while they were working as an employee of STW, the "Commercial General Liability" forms of the Westfield Policies expressly exclude coverage for any claim for "bodily injury" to an employee "arising out of and in the course of employment by the insured."

79. To the extent any of the Claimants allege injury from exposure to asbestos while they were working as an employee of STW before the subject Westfield Policies were in effect, the "Employers Liability" coverage forms of the subject Westfield Policies would not apply because the forms require that any "bodily injury" occur during the policy period.

80. An actual case or controversy exists between the parties to this declaratory action.

**WHEREFORE**, Westfield requests entry by this Court of its order granting declaratory judgment and relief to Westfield as follows:

- a. That the Westfield Policies do not provide coverage for the defense or indemnification of STW for the claims asserted against it in the underlying actions of the Claimants;
- b. That Westfield has no duty to defend or indemnify STW for the claims asserted against it in the Underlying Complaints filed by the Claimants; and
- c. That Westfield is entitled to such further and additional relief as the Court deems just and proper.

**WESTFIELD INSURANCE COMPANY DEMANDS A TRIAL BY JURY AS TO  
ALL FACTUAL ISSUES, IF ANY.**

**WESTFIELD INSURANCE COMPANY**

**By counsel,**

/s/ *Brent K. Kesner*

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